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US CORPORATIONS, INC.
630 NEPTUNE AVE.
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JUN 29 2005

OFFICE OF PETITIONS

In re Application of :
Hakam Madi : DECISION ON PETITION
Application No. 10/650,577 :
Filed: August 23, 2003 :
Title: LOTTERY CALCULATING DEVICE :

This is a decision on the petition under 37 CFR 1.137(b), filed May 23, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

The petition under 37 CFR 1.137(b) will not be treated on its merits, but rather will remain in the file until the United States Patent and Trademark Office (Office) receives a renewed petition under 37 CFR 1.137(b), as well as the payment of the requisite petition fee, the amount due on the filing of the petition. The fee for filing a petition to revive an unintentionally abandoned application is \$750.00. However, the Office finance records indicate that petitioner paid only \$250.00. Accordingly, the petition fee is insufficient.

The Office notes:

35 U.S.C. 41(a)(7) provides that a petition for revival of an unintentionally abandoned application . . . must be accompanied by a petition fee set for in 37 CFR 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 CFR 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned

application is a statutory prerequisite to revival of the abandoned application, and cannot be waived. MPEP 711.03(c) (III) (B).

Accordingly, the Office lacks the discretion to, and will not, address the merits of any petition seeking revival of an abandoned application in the absence of the payment of the petition fee required by statute. In this regard, this application is properly considered abandoned by operation of 35 USC § 133 for failure to prosecute.

The Office reminds petitioner that the provisions of 37 CFR 1.137(b) provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

- (2) The petition fee as set forth in 37 CFR 1.17(m);

- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

- (4) Any terminal disclaimer (and fee set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

A request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request must include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)," a proper response to the Notice to File Corrected Application Papers, and the difference owed of \$500.00 for the petition fee. A copy of the Notice to File Corrected Application Papers is enclosed to assist petitioner in preparing an appropriate response.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Senior Petitions Attorney Christina Tartera Donnell**:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Notice to File Corrected Application Papers